

**Dexter Fastener Technologies, Inc. and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO. Case 7-CA-38082(1)**

July 5, 1996

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS BROWNING  
AND COHEN

Pursuant to a charge filed on January 25, 1996, the General Counsel of the National Labor Relations Board issued a complaint on March 11, 1996, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and to furnish necessary and relevant information following the Union's certification in Case 7-RC-20333. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint and submitting an affirmative defense.

On May 30, 1996, the General Counsel filed a Motion for Summary Judgment. On June 3, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On June 14, 1996, the Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

In its answer and response the Respondent attacks the validity of the certification on the basis of its contentions in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no factual issues warranting a hearing with respect to the Union's requests to bargain and for information. The Respondent's answer does not contest that the Union requested it to bargain and to furnish information on November 30, 1995, and admits that the Respondent has refused to provide the requested information. Although the Respondent's an-

swer denies that the Respondent, as embodied in a February 21, 1996 letter to the Region, has refused to bargain with the Union since the same date, and that the requested information is necessary for and relevant to the Union's duties as the exclusive bargaining representative, for the reasons set forth below we find that these denials do not raise any issue warranting a hearing.

(1) *Respondent's alleged refusal to bargain.* Nowhere in its answer or response does the Respondent contend that it has offered or agreed to bargain with the Union in response to its November 30 request. Further, as indicated above, the Respondent's answer admits that the Respondent has refused to provide the requested information to the Union, and its response to the Notice to Show Cause asserts that the Union's certification was improper. In these circumstances, we find that the Respondent is in fact refusing to bargain with the Union as alleged. See *Maple View Manor, Inc.*, 320 NLRB 1149 (1996); and *Indeck Energy Services of Turner Falls*, 318 NLRB 321 (1995).

(2) *The Union's information request.* In its November 30 letter, the Union requested the following information from the Respondent:

1. Current list of all bargaining unit employees (working, laid off, or on any type leave of absence) including their:

- \* Names, addresses, phone numbers and social security numbers.
- \* Date of Birth
- \* Date of Hire
- \* Gender
- \* Classification
- \* Rate of Pay
- \* Classification Seniority, if any
- \* Current Hours of Work and/or Shift

2. The average total labor cost per hour per employee including all wages, overtime, vacation, holiday, shift premiums, bonuses, medical insurance, dental insurance, vision insurance, sickness and accident insurance, long-term disability insurance, life insurance, FICA, unemployment compensation, workers compensation and any other costs you have. We would like this specifying the per hour cost of each item.

3. The total hours worked by all bargaining unit employees for each of the past three years.

4. Income statements for the last three (3) full years.

5. General and administrative expenses including details on management salaries and benefits.

6. Operating plans, budgets, forecasts or other documents dealing with projected costs and operating results.

7. A list of all your competitors, including company name, address and whether they are

unionized. Also, any wage and benefit information you have on them.

8. A current list of all fringe benefits you are providing such as vacation, holiday, sick days, etc., and all insurance such as medical, life AD&D, sickness and accident, vision, hearing, dental, etc., including an estimated cents per hour cost of each.

9. The following information relative to any pension plan:

a. Active pension plan participants categorized by age, seniority and credited service (vesting and benefit).

b. Retired participants categorized by date of retirement, age, credited service at retirement, amount and type of monthly benefit.

c. Annual company contributions to the pension plan with schedule of dates and level of contributions.

d. The three most recent actuarial evaluations.

e. The three latest Department of Labor 5500 forms, including Schedule B and SSA.

f. The three latest trustee reports. If the plan is carried by an insurance company, then the latest three annual reports from the insurance company.

g. A statement indicating any major changes in fund accounting procedures or assumptions which have occurred since February 15, 1987.

h. A current employee handbook, including rules, regulations, penalties, etc.

10. A current employee handbook, including rules, regulations, penalties, etc.

11. A current company policy manual.

12. A list of all temporary and/or probationary workers currently employed by your company.

13. A detailed list of all work that is currently being subcontracted by Kelly Services or any other temporary service and any work that may be subcontracted in the next 12 month period, including the name and address of who the work is contracted to.

It is well established that, with the exception of the employees' social security numbers requested in paragraph 1, the financial information and information on competitors requested in paragraphs 4 thru 7, and the information regarding nonunit temporary employees<sup>1</sup>

<sup>1</sup> Although the unit description does not specifically exclude temporary employees, "temporary employees" as that term is defined in Board and court precedent are not included in the voting unit. See *United States Aluminum Corp.*, 305 NLRB 719 (1991). Indeed, the Union challenged the ballot of an individual in the underlying representation proceeding on the ground that he was a temporary employee.

and subcontracting requested in paragraphs 12 and 13,<sup>2</sup> all of the foregoing types of information are presumptively relevant for purposes of collective bargaining and must be furnished on request.

Accordingly, we grant the Motion for Summary Judgment and will order the Respondent to bargain and to furnish the requested information with the exception of those types of information mentioned above in paragraphs 1, 4 thru 7, 12, and 13.

On the entire record, the Board makes the following

## FINDINGS OF FACT

### I. JURISDICTION

At all material times, the Respondent, a corporation, with an office and place of business in Dexter, Michigan (Respondent Dexter's facility), has been engaged in the manufacture of automotive fasteners. During the calendar year ending December 31, 1995, the Respondent, in conducting its business operations described above, derived gross revenues in excess of \$500,000 and purchased and received at its Dexter facility goods valued in excess of \$50,000 directly from points outside the State of Michigan.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

### II. ALLEGED UNFAIR LABOR PRACTICES

#### A. The Certification

Following the election held August 18, 1994, the Union was certified on April 24, 1995, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time production and maintenance employees, including primary and secondary heat treat employees, electrical employees, shipping and receiving employees, high/low drivers, quality control employees, inspection packaging employees, utility employees, and tool-room employees employed by Respondent at its Dexter facility, but excluding business office cler-

<sup>2</sup> The Board has held that such information is not presumptively relevant and that the union must therefore demonstrate the relevance of the information. See, e.g., *Maple View Manor*, supra (social security numbers); *DST Industries*, 313 NLRB 639, 640 fn. 3 (1994) (financial information and information on competitors); *Honda of Hayward*, 314 NLRB 443, 455 (1994) (nonunit temporary workers); and *Associated Ready Mixed Concrete*, 318 NLRB 318 (1995) (subcontracting information). Here, the Union did not specify in its request why it wanted such information or otherwise demonstrate the relevance of the information. This does not excuse the Respondent's failure to provide all of the other information requested by the Union, however. Such information clearly is relevant and the Respondent's failure to provide the information on request violated Sec. 8(a)(5) of the Act. See *id.*

ical employees, and guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

#### B. *Refusal to Bargain*

About November 30, 1995, the Union, by letter, requested the Respondent to bargain and to furnish information, and since about the same date, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

#### CONCLUSION OF LAW

By refusing on and after November 30, 1995, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested necessary and relevant information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested, with the exception of employees' social security numbers, financial information and information on competitors, and information regarding nonunit temporary employees and subcontracting.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

#### ORDER

The National Labor Relations Board orders that the Respondent, Dexter Fastener Technologies, Inc., Dexter, Michigan, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Refusing to bargain with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO as the exclusive bargaining representative of the employees in

the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time production and maintenance employees, including primary and secondary heat treat employees, electrical employees, shipping and receiving employees, high/low drivers, quality control employees, inspection packaging employees, utility employees, and tool-room employees employed by Respondent at its Dexter facility, but excluding business office clerical employees, and guards and supervisors as defined in the Act.

(b) Furnish the Union with the information that it requested on November 30, 1995, with the exception of employees' social security numbers, financial information and information on competitors, and information regarding nonunit temporary employees and subcontracting.

(b) Within 14 days after service by the Region, post at its facility in Dexter, Michigan, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 25, 1996.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region

<sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

attesting to the steps that the Respondent has taken to comply.

#### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time production and maintenance employees, including primary and secondary heat treat employees, electrical employees, shipping and receiving employees, high/low drivers, quality control employees, inspection packaging employees, utility employees, and tool-room employees employed by us at our Dexter facility; but excluding business office clerical employees, and guards and supervisors as defined in the Act.

WE WILL furnish the Union with the information it requested on November 30, 1995, with the exception of employees' social security numbers, financial information and information on competitors, and information regarding nonunit temporary employees and subcontracting.

DEXTER FASTENER TECHNOLOGIES, INC.